

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JAMAAL A. MCNEIL,)	8:07CV145
)	
Plaintiff,)	
)	
v.)	MEMORANDUM
)	AND ORDER
CITY OF OMAHA, et al.,)	
)	
Defendants.)	

This matter is before the court on Plaintiff's Motion for Leave to Proceed in Forma Pauperis (filing no. [56](#)) and Motion for Mandamus (filing no. [57](#)). The court dismissed this matter with prejudice and entered Judgment on May 16, 2007. (Filing Nos. [12](#) and [13](#).) Since then, the Eighth Circuit has denied two Petitions for Writ of Mandamus filed by Plaintiff. (See Filing Nos. [45](#) and [51](#).)

As set forth in the Prison Litigation Reform Act, a prisoner cannot:

[B]ring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

[28 U.S.C. §1915\(g\)](#).

Plaintiff brought the following three cases that were dismissed because they failed to state a claim upon which relief may be granted:

- *McNeil v. Public Defender Office*, No. 4:06CV3204 (D. Neb.), dismissed on September 5, 2006. (Case No. 4:06CV3204, Filing Nos. [5](#) and [6](#).)
- *McNeil v. City of Omaha, et al.*, No. 8:07CV145 (D. Neb.), dismissed on May 16, 2007. (Case No. 8:07CV145, Filing Nos. [12](#) and [13](#).)

- *McNeil v. City of Omaha, et al.*, No. 8:07CV143 (D. Neb.), dismissed on August 26, 2008. (Case No. 8:07CV143, Filing Nos. [53](#) and [54](#).)

Plaintiff has not shown that he faces an imminent danger of serious physical injury, nor has he paid the filing fee for a Petition for Writ of Mandamus. See [Fed. R. App. P. 21\(a\)](#). Accordingly, the court will deny Plaintiff's Motion for Writ of Mandamus without prejudice to reassertion before the Eighth Circuit Court of Appeals. See [In re Tyler, 110 F.3d 528, 529 \(8th Cir. 1997\)](#) (prisoner filing petition for writ of mandamus who was ineligible for IFP status because of PLRA's "three strikes" provision, 28 U.S.C. § 1915(g), was ordered by the Eighth Circuit to pay the required filing fee within 15 days or else the petition would be dismissed with prejudice for failure to prosecute).

IT IS THEREFORE ORDERED that:

1. Plaintiff's Motion for Leave to Proceed in Forma Pauperis (filing no. [56](#)) and Motion for Mandamus (filing no. [57](#)) are denied without prejudice to reassertion before the Eighth Circuit Court of Appeals.
2. The Clerk of the court is directed to send a copy of this order to the Eighth Circuit Court of Appeals.

DATED this 6th day of October, 2011.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge

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